97-84185-17

King, Edmund B.

Taxation: effect of proposed Ohio...

Columbus, O.

[1903]

97-84185-17
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

308
Z
Box 774 King, Edmund B
Taxation: effect of proposed Ohio constitutional amendment. Columbus, O., Ohio state board of commerce [1903]
25 p.

"From Public policy, August 8, 1903."

692776

RESTRICTIONS ON USE: *Reproductions may not be made without permission from Columbia University Libraries.*

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 9:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 9-10-97 INITIALS: AP

TRACKING # : 27570

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

TAXATION

EFFECT OF PROPOSED OHIO CONSTITUTIONAL AMENDMENT

BY

JUDGE EDMUND B. KING
SANDUSKY

308
Z
Bo 774

FROM PUBLIC POLICY, AUGUST 8, 1903

OHIO STATE BOARD OF COMMERCE
COLUMBUS, OHIO

308
Z
B64774

CONTENTS.

Effect of Proposed Ohio Constitutional Amendment..... 1
Proposed Essential Change in Organic Law..... 1
An Unwelcome Burden..... 2
Taxation and Government Inseparable..... 2
The Power of Taxation..... 3
Abuse of the Power of Taxation..... 3
The Strongest and Most Pervading Power of Government. 4
A Legislative Power Limited by Constitutional Provisions..... 5
Limitations on the Taxing Power in the Ohio Constitution. 6
Text of the Proposed Amendment..... 7
Change Made by the Proposed Amendment..... 9
Will Broaden the Taxing Power..... 10
Proposed Amendment Analyzed..... 11
Scope of the Changes Proposed..... 12
Views of the Men Who Drafted the Present Constitution.. 13

APR 15 1917 Pon

CONTENTS—(Continued).

Appeals to Prejudice, Not to Reason..... 14

What Is Property? 15

Franchises Not Taxable—One Opinion..... 16

Franchises Are Taxable—Another Opinion..... 16

Proposed Amendment Will Render the Taxing Power Less Liable to Criticism and Judicial Interference.... 18

Action by the Legislature Less Harmful Than by Constitutional Conventions..... 19

Constitutional Errors Difficult to Remedy..... 19

An Error in the Constitution Prevents Wise Legislation.. 20

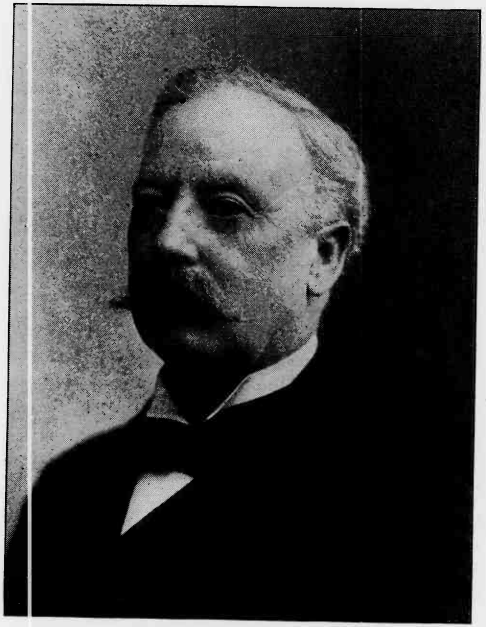
The Present Constitution a Hindrance to Wise and Just Taxation 21

A Notorious Failure..... 22

The Proposed Amendment Ought to Be Adopted..... 23

Less Constitution..... 23

Every Citizen Is Bound to Trust the People..... 24



JUDGE EDMUND B. KING.

TAXATION.[1]

EFFECT OF PROPOSED OHIO CONSTITUTIONAL AMENDMENT.

BY JUDGE EDMUND B. KING OF SANDUSKY.

The subject of taxation is so old and worn that it may be doubted whether there remains anything new to be said upon it. The power of the executive committee of this association, however, is so great that when the committee expressed a wish, in a somewhat compulsory form, that the writer should present a paper, there remains for him nothing but an attempt to comply. Hence, if the views expressed are not new or if they do not meet the sentiments of this association, the executive committee, and not the writer, should bear the blame.

PROPOSED ESSENTIAL CHANGE IN ORGANIC LAW.

The excuse, if one be needed, for bringing the subject of taxation before this association, is the fact that this year the voters of Ohio are to pass judgment on an amendment to the constitution, essentially chang-

1. An address before the Ohio State Bar Association, Put-in-Bay July 9, 1903.

INTENTIONAL SECOND EXPOSURE

JUDGE EDMUND B. KING.

TAXATION.[1]

EFFECT OF PROPOSED OHIO CONSTITUTIONAL AMENDMENT.

BY JUDGE EDMUND B. KING OF SANDUSKY.

The subject of taxation is so old and worn that it may be doubted whether there remains anything new to be said upon it. The power of the executive committee of this association, however, is so great that when the committee expressed a wish, in a somewhat compulsory form, that the writer should present a paper, there remains for him nothing but an attempt to comply. Hence, if the views expressed are not new or if they do not meet the sentiments of this association, the executive committee, and not the writer, should bear the blame.

PROPOSED ESSENTIAL CHANGE IN ORGANIC LAW.

The excuse, if one be needed, for bringing the subject of taxation before this association, is the fact that this year the voters of Ohio are to pass judgment on an amendment to the constitution, essentially chang-

1. An address before the Ohio State Bar Association, Put-in-Bay July 9, 1903.

ing that organic law upon this subject as it has existed and been in force for the past fifty-two years.

AN UNWELCOME BURDEN.

The burden of taxation, in whatever shape it comes, is never enthusiastically welcomed or voluntarily assumed by the individual citizen. When called upon by the assessor or taxing officer, it is but natural for the individual to depreciate the value of his own possessions and, if requested, appreciate the value of his neighbors, nor do any of us go far to assist that much maligned official in discovering subjects for assessment that may not otherwise be visible to his keen eye. Hence, problems of taxation are and will be present to vex and worry the citizen and his legislative representative.

TAXATION AND GOVERNMENT INSEPARABLE.

Death and taxes are said to be inevitable, and so long as we cling to life we shall be called upon to discuss and pass upon schemes of taxation. Taxation is inevitably connected with government. A class of individuals mostly distinguished for their innate or cultivated distaste for industry of any sort hold the doctrine that there is no necessity for any law regulating or controlling the individual or protecting his right of property; that the ideal society is one without any law or constituted authority.

These people have become, by their speeches and conduct, somewhat unpopular. We call them anarchists, and in their practice of the teachings they pro-

fess to believe, they have not hesitated to assault both the person and his property. They have committed murder and robbery under its name. Their conduct thus answers all their contentions and vindicates the wisdom of all the ages, that the well-being of society demands the protection of the person and property rights of the individual citizen.

THE POWER OF TAXATION.

For the preservation of the rights of life, of liberty and of the pursuit of happiness, governments are instituted among men, says the Declaration of Independence. To maintain these governments, secure these protections, enforce the well-being of society and provide for the common defense, requires the raising of money to defray the expenses thereof, by some form of taxation. Each state and nation has its own forms and methods, which vary somewhat in detail, but on the whole follow the same general plan.

"A tax," says Webster, "is a rate or sum of money assessed on the person or property of a citizen by the government, for the use of the nation or state."

Judge Cooley says: "Taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes."

ABUSE OF THE POWER OF TAXATION.

This power, if exercised by the government, without limitation, is liable to abuse. Mr. Justice Hunt said in United States vs. B. & O. R. R. Co., 17 Wallace, 322:

"A tax is understood to be a charge, a pecuniary burden, for the support of government. Of all burdens imposed upon mankind that of grinding taxation is the most cruel."

Chief Justice Marshall said in McCullock vs. Maryland, 4th Wheaton, 431:

"The power to tax is the power to destroy."

If it is, therefore, employed against one class of individuals or one description of property to the favor and benefit of another class of either individuals or property, it may ruin the one class and enrich the other.

It is well expressed by Mr. Justice Miller in Savings Society vs. Topeka, 20 Wallace, 655, where he says:

"To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it among favored individuals, to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation."

THE STRONGEST AND MOST PERVADING POWER OF GOVERNMENT.

"The power to tax is, therefore, the strongest and most pervading of all the powers of government, reaching directly or indirectly to all classes of the people." It is the general rule of taxation which has been applied by the courts, regardless of special provisions of the constitution relating to that subject, that taxation must be equal and uniform on the same subjects of taxation, but most of the states have such provi-

sions in their constitutions; yet, if that were absent, equality would still be required under the provision of the fourteenth amendment to the federal constitution, "that no state shall deny to any person within its jurisdiction the equal protection of the laws."

A LEGISLATIVE POWER LIMITED BY CONSTITUTIONAL PROVISIONS.

This great power is an attribute of sovereignty inherent in government and is, therefore, legislative, and is limited in the United States, both in the federal and state governments, by constitutional provisions relating to the subject. The limitations found in the federal constitution are, article I, section 10:

"No state shall, without the consent of Congress, lay any imports or duties on imports or exports."

Also: "No state shall, without the consent of Congress, lay any duty on tonnage," and the fourteenth amendment above referred to, which has been held to constitute a limitation upon the powers of a state and, among others, upon the power of taxation.

We find, then, that taxation is the method employed for raising revenue for public purposes, authorized by the constitution; it must be equal in burden upon the same subjects of taxation and must be levied within constitutional limitations, federal and state. It should excite no wonder that a power so great has in its exercise been a frequent subject of discussion, criticism and legislative action.

The fact that the individual does not at the time of payment recognize that he is receiving a full consid-

eration for his money tends to quicken his ingenuity in devising ways to relieve himself of so much of his public burden and in suggesting a possible means for shifting that burden, or a portion of it, to the shoulders and pockets of someone else. To some extent everyone is selfish. Most people are not slow to appreciate the benefits derived from the amount of taxes they pay, and of the theory of governmental protection, which is the basis of it all, and we are sometimes led to doubt the efficacy and value.

LIMITATIONS ON THE TAXING POWER IN THE OHIO CONSTITUTION.

Ohio has probably not had more difficulty along this line than has come to every other state or government. It will be well, in this connection, to briefly refer to the constitutional provisions which now exist and to the one that is proposed. By the constitution of 1802 no limitation was imposed upon the taxing power, save that by section 23, article 8, it was provided that "the levying taxes by poll is grievious and oppressive; therefore, the legislature shall never levy a poll tax for county or state purposes."

That constitution invested the legislative authority in a general assembly and imposed no other restriction than that quoted upon its power to levy taxes; but the constitution of 1851 devoted considerable attention to this subject, either directly or incidentally. It vested the legislative power of the state in a general assembly. (Section 1, Article 2.)

It provided that "Private property shall ever be

held inviolate but subservient to the public welfare." (Section 19, Article 1).

It provided that "All laws of a general nature shall have a uniform operation throughout the state." (Section 26, Article 2).

By section 1, article 12, the levying of poll taxes for state or county purposes is prohibited.

Section 2 of article 12 provides: "Laws shall be passed, taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise; also all real and personal property, according to its true value in money."

Section 3, article 12: "The general assembly shall provide by law for taxing notes and bills discounted or purchased, moneys loaned, and all other property, effects or dues of every description (without deduction), of all banks now existing or hereafter created, and of all bankers, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals."

Section 4 of article 13 provides:—Property of corporations now existing or hereafter created, shall forever be subject to taxation the same as the property of individuals."

Section 18 of the schedule provides: "No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the general asembly may, by law, provide against the evils resulting therefrom."

TEXT OF THE PROPOSED AMENDMENT.

It is now proposed to substitute for section 2 of

article 12 the following: *"The general assembly shall provide for the raising of revenue for all state and local purposes in such manner as it shall deem proper. The subjects of taxation for state and local purposes shall be classified, and the taxation shall be uniform on all subjects of the same class, and shall be just as to the subject taxed."*

I have omitted from section 2 now existing and as proposed all the language relating to the exemptions, as in this respect both sections are alike, and the provision is not germane to the subject discussed.

It is possible that some criticism might be passed upon the phraseology of the proposed amendment. It has been held in this state that the power of taxation vested in the general assembly is conferred by section 1 of article 2. A long series of cases decided by our Supreme Court, beginning with Hill vs. Higdon, 5 O. S. 243, and ending with Southern Gum Company vs. Laylin, 66 O. S. 578, decided between 1853 and 1902, settle beyond question the opinion of the Supreme Court upon that subject, and that article 12 and the other provisions of the constitution referring to the subject are but limitations upon the power conferred in section 1 of article 2.

Hence, it might be well said that in view of these decisions and the judicial construction placed upon the constitution uninterruptedly for fifty years, the first sentence of the proposed amendment is surplusage. That *"the general assembly shall provide for the raising of revenue for all state and local purposes in such*

manner as it shall deem proper," is but an affirmation of the judicial opinion that the power to raise revenue for state and local purposes in such a manner as the general assembly deems proper is effectually and completely conferred by section 1 of article 2.

This leaves in the proposed amendment but the second sentence, as in lieu of the provision of the present constitution. That is, *"The subjects of taxation for state and local purposes shall be classified and the taxation shall be uniform on all subjects of the same class and shall be just to the subject taxed."*

CHANGE MADE BY THE PROPOSED AMENDMENT.

This substitutes a uniform rule upon a class of subjects rather than upon the whole, and provides that the tax shall be just to the subject. It abrogates the rule contained in the present section as to taxing moneys, credits, investments in bonds, stocks, stock companies or otherwise, and real and personal property, according to their true value in money. It leaves the uniform rule substantially unrepealed, but enables the legislature to divide subjects of taxation into classes and make the tax uniform as to each class, and provides that the tax shall be just upon the subject taxed, but does away with the command that those subjects mentioned in section 2 of article 12 now shall be assessed according to their true value in money.

Doubtless, when all has been considered, there is practically little difference between the proposed amendment and the present constitution, except that the limitation upon the power of the legislature is not

specific. The limitation now is provided by an enumeration of certain subjects to be taxed, such as money, credits, investments in bonds, stock and stock companies, and real and personal property, whereas in the proposed amendment the expression is "the subjects of taxation." This comprises all subjects, whether they be those enumerated now in section 2 or any others that might be supposed to exist.

It has been repeatedly declared by the Supreme Court of Ohio that section 2 of article 12, being a limitation upon the taxing power, applies only to such subjects of taxation as are therein enumerated, and that this section is not a limitation of the constitution expressed upon the power to tax other subjects. It is intimated that there are certain implied limitations; as that constitution was established to "promote our common welfare;" that government is instituted for the equal protection and benefit of the people; that private property shall ever be held inviolate but subservient to the public welfare.

It is said: "These limitations prevent confiscation and oppression under the guise of taxation, and the power of such taxation can not extend beyond what is for the common or public welfare, and the equal protection and benefit of the people."

(Burkett, J., in 66 O. S. 594).

WILL BROADEN THE TAXING POWER.

What subjects may be taxed under this amendment, that could not be under the present constitution, may not be at this time entirely clear. By the industry of

the legislature and the holding of our courts, the limitation upon the power of taxation contained in section 2 of article 12, has, in my judgment, gradually contracted from the extensive application it was supposed to have at the time of its adoption.

It seems to be clear that the first Supreme Court sitting after the adoption of the constitution understood that the taxing power of the constitution made property the sole basis of taxation.

This is asserted in varying phraseology several times in the opinion of Chief Justice Bartley in Bank vs. Hines, 3d O. S., page 9,

and although two other opinions were given in that case, this assertion is not controverted by the other judges, one of whom was Ranney, who sat in the convention that framed the constitution. The judges delivering opinions were: C. J. Bartley, Thurman and Ranney. All concurred in the judgment rendered, but Ranney especially found fault with some part of the argument of the chief justice and devoted a long opinion to explaining his views upon the subjects discussed.

PROPOSED AMENDMENT ANALYZED.

The proposed amendment, section 2, then, may be analyzed as follows:

1. That subjects for taxation shall be classified;
2. Taxation shall be uniform on subjects of the same class, and
3. Taxation shall be just to each subject taxed.

This practically leaves the legislature to determine

what is a subject of taxation and the manner and method of taxation, subject to the limitations of uniformity on a class and of justness to each subject taxed.

SCOPE OF THE CHANGE PROPOSED.

The scope of the change proposed may then said to be:

1. A full power to tax anything and everybody taxable, and

2. Abrogation of the rule that property must be taxed upon its true value in money, limited only by the other provisions of the constitution, such as no poll tax and no license of the liquor traffic.

In my judgment section 3 of article 12 and section 4 of article 13 will hereafter be, as they have heretofore been, of little account in determining the right of taxation. These sections provide that (section 3, article 12) the property of banks and (section 4, article 13) the property of corporations shall be taxed the same as individuals. That is substantially their effect. It was early doubted whether they had any particular effect in limiting or controlling the right of taxation as provided for in section 2 of article 12, and I may say, it would seem that such doubt was well-founded, in view of the fact then suggested, that nowhere in section 2 is individual property mentioned, and hence, that section is applicable alike to the property of corporations and banks, as well as individuals.

If these sections, 3 and 4 of articles 12 and 13 re-

spectively, had been omitted from the constitution, section 2 would have amply covered all the tangible property of banks and corporations, and provided for their assessment as fully as those sections undertake to do, and the proposed amendment, section 2, still leaves that power over corporations and banks undisturbed, but extended in so far as the language of the proposed section extends the power of taxation contained in the constitution.

VIEWS OF THE MEN WHO DRAFTED THE PRESENT CONSTITUTION.

It is perhaps worth while to notice briefly, if only out of curiosity, the tenor of the discussions of those eminent gentlemen who drafted the present constitution. Still, we may consider their views not alone with curiosity, but, to some extent, with veneration, when we remember that that convention contained, so far as its legal ability was concerned, the giants of those times: Andrews, Case, Green, Grosbeck, Peter Hitchcock, Horton, Humphreville, Kennon, Kirkwood, Nash, Otis, Stanbury, Swan, Vance, Rufus P. Ranney, and many others of distinguished ability, who considered the various provisions that made up our organic law. Hitchcock and Ranney had sat upon the Supreme bench of the state, and Ranney, Scott, Swan and Kennon soon thereafter were members of that court.

An examination of these debates discloses that the question of the subject of taxation was hardly dis-

cussed at all; that the principal time consumed in any one feature was in discussions upon whether state and federal bonds and stocks could or should be taxed; also much time, thought and oratory was expended in considering how corporations could be controlled in their power, and whether the state, through its general assembly, had the right to appeal or modify existing charters, and incidentally whether a franchise was property. The question whether a franchise could be taxed or not, I do not find alluded to in the entire range of debates, although a majority of the convention were evidently anxious not only to curtail corporate power, but to make corporations bear their just share of public burden.

APPEALS TO PREJUDICE, NOT TO REASON.

We find that those old lawyers and judges could not and did not forego the opportunity to talk to the galleries, and through the press to the great public outside, as they dilated and expanded upon the iniquities of corporate power, and the rights of the poor as against the wealth of the rich. It seemed, however, through all the discussions to be conceded that the expense of the governments, state and local, should be borne by taxes levied upon property, and property alone, and along that line much was said about making the rich man pay his proportion of the taxes.

Hence, the opportunity for considerable oratory of a kind that would not be looked upon with favor to-day in a deliberative body. Perhaps the sentiments expressed by these distinguished men contributed to their after

success in being elected to the Supreme bench of the state, and what would surprise one of this day and generation is that even that distinguished lawyer and judge, Rufus P. Ranney, was not distanced by any of his colleagues in his fervid appeals for the protection of the poor man as against the rich.

In discussing the right of the legislature to take away or repeal the charters of corporations there was a great deal of that sort of argument, and occasionally an inconsistency or two can be found. For instance, on December 24, the distinguished jurist I have just mentioned said:

WHAT IS PROPERTY?

"But what is a charter? Gentlemen say it is property. I agree that it is property; but because it is property, can it always be seized for the public use?"

On January 4, eleven days later, the same distinguished gentleman said:

"What is property? We have all been accustomed to regard it as something tangible. When we have acquired a horse or a farm we know what it is, but the idea that you can cheat the legislature into the grant of some exclusive privilege and call that property is certainly the most absurd of all humbugs."

And on February 5, having been charged by one of his fellow members as declaring that a franchise was property, he arose in his place to refute that he had ever said so and quoted the remarks last read, to-

gether with others, to show that he had never said and never held that a franchise was or could be property.

FRANCHISES NOT TAXABLE—ONE OPINION.

There is not much light to be gained on the subject of taxation in its modern aspect from these constitutional debates. The references alluded to lead me to the question that has been sometimes discussed, not in courts, perhaps, but rather in political and economic debates, of the power under the constitution to tax franchises. If a franchise is either real or personal property, or is a credit or investment in a stock company, it is taxable under section 2, and if it is not property, but is a taxable subject, it would seem clearly to be taxable under the general taxing power conferred in section 1 of article 2.

Immediately following the debates I have referred to, Chief Justice Bartley thought it incumbent on him to say in the case of Bank vs. Hines before referred to:

"A corporate franchise, therefore, being a mere privilege or grant of authority by the government, is not property of any description, and consequently not subject to taxation under the above provision of the constitution," and it is clearly inferable from his opinion that it was his judgment that franchises could not be taxed at all under the constitution of Ohio, and Judge Ranney in the same case does not controvert that statement.

FRANCHISES ARE TAXABLE—ANOTHER OPINION.

Without quoting intervening decisions of the Su-

preme Court for the purpose of delineating the various steps by which judicial construction of the constitution upon the subject of taxation has grown, I quote the following from the case of Southern Gum Company vs. Laylin, 66 O. S. 593:

"The grant of legislative power to the general assembly in section 1 of article 2 of the constitution is absolute, and is not limited in that section. The absolute and unlimited power of taxation is granted by that section to the general assembly, and the taxation may be upon franchises, privileges or property, as the general assembly may deem best; but when it comes to taxing property there is a limitation placed upon that power by sections 1, 2 and three of article 12 of the constitution, and by section 4 of article 13 of the same instrument."

And again, on page 594, the following:

"But upon the power to tax privileges and franchises, there is no expressed limitation in the constitution, but certain limitations upon that power must be implied from other provisions of the constitution so as to make the whole instrument harmonious and consistent throughout. The constitution was established to 'promote our common welfare.' (Preamble to the constitution.) Government is instituted for the equal protection and benefit of the people. (Sec. 2 of the Bill of Rights.) Private property shall ever be held inviolate but subservient to the public welfare. (Sec. 19 of the Bill of Rights.) These provisions of the constitution are implied limitations upon the

power of taxation of franchises and privileges and limit such taxation to the reasonable value of the privilege or franchise conferred originally, or to its continued value from year to year.

And the cases of:

Ashley vs. Ryan, 49 O. S. 504,

State vs. Ferris, 53 O. S. 314,

Haggy vs. State, 55 O. S. 613,

are referred to as examples of taxing the privilege or franchise conferred; and Telegraph Company vs. Mayer, 28 O. S. 521, and Express Company vs. State, 55 O. S. 69,

are referred to as examples of taxing the continued value of the existing privilege or franchise from year to year.

PROPOSED AMENDMENT WILL RENDER THE TAXING POWER LESS LIABLE TO CRITICISM AND JUDICIAL INTERFERENCE.

With this latest exposition of the constitution in its present form before us, it may not be entirely plain wherein the proposed amendment to the constitution will add to the present power of the legislature on this subject. On the other hand, however, I do not regard the proposed amendment as in any respect harmful or injurious to any interest in the state, and it will render that power less liable to criticism and judicial interference upon questions that may still be said to be disputed or unsettled in this state. If it does the latter, it will prove beneficial.

ACTION BY THE LEGISLATURE LESS HARMFUL THAN BY CONSTITUTIONAL CONVENTIONS.

I cannot help but believe that most constitutions undertake too much in the way of legislation, and confuse and cloud the principles controlling governmental action, which they are supposed to lay down. Personally, I would as soon trust an average legislature to determine upon a scheme of taxation as any constitutional convention ever before or ever hereafter to be called, not because the average legislature contains an amount of ability equal to a constitutional convention, although it may, but because the average legislature is composed of men who desire to do the right thing, having regard to the opinions and beliefs of their constituents, and that it will not knowingly perpetrate a wrong or injustice, but if it does perpetrate a wrong or an injustice, it can be speedily remedied, whereas, a wrong or an injustice perpetrated by a constitutional convention cannot be so speedily or easily remedied.

CONSTITUTIONAL ERRORS DIFFICULT TO REMEDY.

Our experience with our present constitution convinces us that unless some trick is resorted to in the submission of an amendment, it cannot hope to receive a majority of the votes of the people of the state. By the provisions of the instrument, it is to be submitted to the people at a state election, at which members of the general assembly are chosen, and consequently, many other officers elected, and the interest of the voter invariably is directed to the personnel of the

icket rather than to some principle involved in a constitutional amendment.

Hence, errors that creep into constitutions through ll-advised attempts at control of the legislature are ıpt to stay for a great length of time and until they ɔecome finally unbearable, when the people insist upon heir amendment. An example of this is, in my judgnent, found in the eighteenth section of the schedule ıdopted at the time of the constitution by a special vote, which prohibits the licensing of the traffic in intoxicating liquors. Probably all will not agree with this paper on that subject, but intelligent observation will convince fair-minded men that if that provision were out of the constitution, we would have, and public sentiment in the state would demand, a much wiser and a more efficient system of control over a traffic that in the present day and age, it is not absurd to say, cannot be absolutely prohibited.

AN ERROR IN THE CONSTITUTION PREVENTS WISE LEGISLATION.

We have finally reached the point where the courts have allowed the legislature to levy a tax upon this traffic. It is a uniform tax levied upon the individuals carrying it on, of equal amount in every locality in the state, but it contains and can under this constitutional provision contain absolutely no legislation of a regulating character other than police regulations which may be adopted to in some manner control its evils. But in states where the legislature is free to legislate and I take the state of Pennsylvania as an

example of what many states have done and are doing, a license is issued to the person carrying on the traffic. It is issued by a court and it cannot be issued even by the court to a man of bad moral character or one who has been convicted of violating any of the police regulations of the statute.

There are many other provisions of control which tend to make a traffic that is liable to become demoralizing and disreputable more tolerable in the community, and is the wisest and best temperance legislation that can be put upon the statute book. Yet for fifty years we have been hampered by a provision which prevents a license, which was defeated by the rural communities of 1851 upon the plea that it was wrong to recognize by license such a traffic—a conclusion based upon an absolutely false premise. A wise license system might not give us more revenue from its traffic, for revenue should not be its distinguishing feature, but it would give us a far better regulation than we have or can ever have under the present constitution.

THE PRESENT CONSTITUTION A HINDRANCE TO WISE AND JUST TAXATION.

To some extent, the provision of the present constitution that real and personal property shall be taxed according to its true value in money has been a hindrance to wise and just taxation. I use the term, "personal property," given in the constitution, as including all the other things enumerated in section two, such as credits and investments in stocks and

bonds. It is notoriously obvious that credits and investments in notes, stocks and bonds do not pay a tax upon their real value in money, or upon any other value concurrent with the tax assessed upon real and visible personal property.

A NOTORIOUS FAILURE.

The attempt of the constitutional convention to devise a scheme by which the rich man should be made to pay his share of the public burden has notoriously failed in respect to that class of property, for many are the rich men who have the bulk of their property invested in that class of evidences of indebtedness which never come to the eye of the assessor. Hence, a large portion of the property of the state goes untaxed, while the property of the poor man is always open and visible. It is a small house and lot, with a little furniture, or a small farm and some tools and live stock. These never escape, while the investments of the rich invariably do.

Intelligent writers upon this subject have advocated the notion of exempting that class of property altogether, as an attempt to tax it, in whatever state tried, has inevitably and notoriously failed. So long as an attempt is made to tax property at all, no doubt that class of personality should pay a share. It has been suggested, however, and under the proposed amendment could undoubtedly be adopted, that provision should be made by law for taxing it at a percentage of its real value, say 25 per cent of all money invested, with a provision that in case any person failed to

return his moneys so invested, fully and truly, the true amount should be returned, together with 100 per cent penalty added. Assuming that a man had $10,000 invested in notes, stocks or bonds or other evidences of indebtedness, he would pay a tax, if he honestly returned it, upon $2,500. If he did not honestly return it, and it was discovered, he would pay a tax upon $20,000.

There is much to be said in favor of that proposition. It would, no doubt, tend to secure an honest return of that class of credits, and would, no doubt, secure more taxes paid into the state and local treasuries than the present attempt under the constitution to tax these credits according to their true value in money.

THE PROPOSED AMENDMENT OUGHT TO BE ADOPTED.

Having examined this question somewhat hurriedly, but with an attempt at least to be fair and just in its treatment, it is believed that, all things considered, the present amendment ought to be adopted, and thus unfetter the hands of the general assembly on this subject of taxation. Occasionally moneyed interests are wont to inquire if the legislature will not have too much power. I have already referred to that question. The legislature is bound to listen and in the end always will listen to enlightened public sentiment. This is the voice that will control their deliberations and their last judgment.

LESS CONSTITUTION.

Upon the subject of taxation, as upon nearly every

other subject, I believe the people are best governed who are undertaken to be governed the least by constitutions. Not that this argument goes so far as that there need be no constitution, yet we know that one of the greatest nations of the world has no written constitution. It has a constitution grown up in the minds and hearts of the people who compose the nation; in the writings of its distinguished economists; in the decisions of its great courts.

EVERY CITIZEN IS BOUND TO TRUST THE PEOPLE.

This nation and this state are getting old enough so that we have and will continue to grow and develop that kind of an unwritten constitution which will be, along certain lines, as unalterable as the laws of the Medes and Persians.

Certain principles become by practice and custom and long continued observations parts of the organic law of humanity, so firmly imbedded in the warp and woof of life that neither constitutional conventions nor legislatures can affect their permanency.

Hence, I believe that the future history of our nation and state will develop the fact that written constitutions are made for the people, not the people for the constitutions, and that there will grow to be less and less necessity for written declarations termed "constitutions," and so far as ephemeral legislative provision is concerned, whether on the subject of taxation or any other subject, as a Republic, every citizen is bound

to trust the people. History will demonstrate that while they are wrong sometimes, they are never wrong so much of the time as any one individual in the community, and that the whole is not only greater, but also better and wiser, than a part.

MSH D7570

END OF
TITLE